close of his argument that the way a certain black jack got into the case was because, after the shooting, one jointly indicted with defendant threw down the black jack beside deceased was prejudicial error, as not being supported by evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 715; 16 Va.-W. Va. Enc. Dig. 136.]

5. Criminal Law (§ 730 (7)*)—Remarks of Counsel—Cure of Error.—In a prosecution for murder, where the prosecuting attorney without justification in the evidence stated that one jointly indicted with defendant threw down the black jack beside deceased after the shooting, the statement by the court that he did not remember the evidence as to the black jack, and that jury should not consider statement by counsel not supported by the evidence, furnished no protection to the defendant against counsel's improper remarks.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 82.]

Error to Circuit Court, Dickenson County.

Wm. McCoy was convicted of murder in the second degree, and he brings error. Reversed.

Chase & McCoy and *Skeen & Skeen,* of Clintwood, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and *F. B. Richardson,* of Richmond, for the Commonwealth.

AMERICAN SURETY CO. OF NEW YORK *v.* QUINCEY et al.

June 12, 1919.

[99 S. E. 641.]

1. Executors and Administrators (§ 506 (3)*)—Ex Parte Account—Confirmation by Failure to Except—Opening—Evidence.—Conceding that ex parte account of executors stood confirmed at end of 30 days from filing thereof, no exceptions having been filed thereto, as provided by Code 1904, § 2098, evidence of misappropriation by executor and fraudulent entries held sufficient to authorize court to order a reference of issue, under rule that good cause for reopening account must be made before a reference can be had.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 673.]

2. Executors and Administrators (§ 528 (4)*)—Bonds—Liability of Surety—Authority under Will—Knowledge of Facts.—Where surety company on bond of executor knew before issuance of bond that main reason for appointment of foreign executor as executor in Virginia was to handle money coming from sale of real estate in-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

volved in litigation, and entered into arrangement whereby money coming into hands of executor would be under joint control, and surety company compelled giving of new bond because of violation of that arrangement, it cannot urge that under will executor had no authority to sell real estate, or collect rents and profits therefrom, and that therefore it was not liable under bond requiring faithful discharge of duties of office.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 683.]

3. Executors and Administrators (§ 532*)—Bond of Ancillary Executor—Liability of Surety—Funds Paid to Domiciliary Executor.—Surety on bond of Virginia executor cannot escape liability for misappropriation of funds coming rightfully into his hands by fact that he turned over such funds to himself as New York executor without approval of the court, and as taxes not having been paid as required by Code 1904, § 492b, the fund could not be paid out.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 685.]

Appeal from Chancery Court of Richmond.

Suit to surcharge settlement of executor by Chas. E. Quincey and another against Willis Bruce Dowd, as executor, and the American Surety Company of New York, as surety on his bond, and another. From the decree rendered, the American Surety Company appeals. Affirmed.

Wellford & Taylor, of Richmond, for appellant.

David Meade White and *S. A. Anderson,* both of Richmond, for appellee.

WEST *v.* COMMONWEALTH.

June 12, 1919.

[99 S. E. 654.]

1. Criminal Law (§ 564 (1)*)—Venue—Proof.—In prosecution for grand larceny, it is necessary for the state to prove the venue.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 80.]

2. Criminal Law (§ 564 (3)*)—Venue—Circumstantial Evidence.—The venue of the crime of grand larceny can be proved either by direct or circumstantial evidence.

3. Criminal Law (§ 564 (3)*)—Venue—Grand Larceny—Sufficiency of Evidence.—In prosecution for grand larceny, circumstantial evidence held to prove venue.

4. Criminal Law (§ 1144 (17)*)—Appeal—Presumption—Judgment.—The judgment of the trial court will be presumed to be correct.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.